

In the High Court of Uttaranchal, at Nainital.

A.O. No. 175/2001
(Old FAFO No. 116 of 1993)

- 1- State of U.P. through Collector, Dehradun.
- 2- Public Works Department, Government of
U.P. District Uttarkashi
- 3- Executive Engineer, Electrical Mechanical
Division, Rishikesh .. Appellants.
Vs.

- 1- Smt. Padma Devi W/o Late Puran Singh
R/o Village Namberpur
P.S. Sahaspur, District Dehradun.
- 2- Sanjiv Kumar
3- Ajay Kumar,
4- Vijay Kumar,
Sons of Smt. Padma Devi . Respondents.

Sri Nand Prasad, learned Standing Counsel for the appellant.
Sri Kishore Kumar, holding brief for Sri Ramji Srivastava,
learned counsel for the respondents.

Hon'ble B.C. Kandpal, J.

This appeal has been filed by the State through Public Works Department, Uttarkashi, against the judgment and award dated 20-1-1993, in M.A.C.T. Petition No. 86 of 1987, Smt. Padma Devi and others Vs. P.W.D. Uttarkashi and others, passed by III Addl. District Judge, Dehradun, whereby the claimants/respondents were awarded Rs. 72,000/-, along-with interest @ 12% per annum from the date of petition till the date of realization.

2- Briefly stated the facts giving rise to this appeal are that on 10-12-1986, at about 6 P.M. Pooran Singh aged about 32 years was waiting for a bus, along with Phool Mati, and Faqir Chand, in front of Prince Hotel,

Haridwar Road, Dehradun for going to Village Balewala. At the same time Truck No. UTL- 6867, belonging to P.W.D. came there from Rajpur side driving rashly and negligently by its driver Baldev Prasad and hit Pooran Singh, who was standing on his right side on the Kuccha Patri. Pooran Singh sustained injuries on account of the rash and negligent act of Baldev Prasad and was rushed to Doon Hospital in the offending vehicle itself, where he succumbed to the injuries, the same day. According to the claimants/respondents the deceased Pooran Singh was doing the work of helper with mason and was earning Rs.20/- per day. The claimants filed claim petition for compensation of Rs. 2,88,000/-.

3- The Opposite Parties/appellants filed joint W.S. before the Tribunal and alleged that the truck No. UTL 6867 did not involve in the accident. On the day of the alleged accident, the driver of the truck loaded cement in it and proceeded towards Rishikesh. The Truck was being driven carefully and at a slow speed and when it reached a few paces ahead of Prince Hotel, at about 6.15 P.M., chain of the truck from the back side was knocked by the public and the driver stopped the truck and on the request of the persons collected there, the truck driver brought a person lying on the edge of road, to the hospital and he was falsely involved in the accident.

4- O.P.No.4, Driver of the offending truck, also filed separate W.S. and took the identical pleas to those raised by other O.Ps.

5-The learned Tribunal framed the following issues on the pleadings of the parties:-

- 1- Whether the alleged accident had taken place on account of the rash and negligent driving of Truck No. UTL 6867? If so, its effect?
- 2- Whether truck No. UTL 6867 was not involved in the accident ? if so, its effect?
- 3- To what amount of compensation, if any, are the claimants entitled?

6- The parties adduced evidence in support of their claim. The claimants/ respondents produced Phoolmati P.W.1, and Smt. Padma Devi, as P.W.2, whereas the O.Ps. produced Baldev Prasad, the driver of the Truck as D.W.1, Maya Chand, D.W.2, and Dheeraj Mani as D.W.3.

7- The learned Tribunal on assessment of the evidence on record and hearing learned counsel for the parties awarded Rs.72,000/- as compensation to the claimants/respondents against the respondents along with interest @ 12% per annum from the date of presentation of the claim petition.

8- Aggrieved by the aforesaid impugned judgment and award, the State through P.W.D. filed appeal before the Allahabad High Court, which was transferred to this Court after creation of new State.

9- Heard learned counsel for the parties and perused the record.

10- It is now to be seen whether the accident had taken place on account of rash and negligent driving of truck No. UTL 6867 due to the rash and negligent driving by its driver or not?.

11- The appellants before the court below have denied the involvement of the truck in question in the accident, as it was being driven very slowly and cautiously and has been falsely implicated in this accident.

12- The record reveals that Pooran Singh lost his life on 10-12-1986 due to the injuries sustained in the motor accident. The case of the claimant/respondents banks upon the testimony of Phool Mati, P.W.1, in whose presence the accident had taken place. This witness has stated in explicit terms that at the time of accident she as well as Faqir Chand and Pooran had been standing in front of Prince Hotel waiting for conveyance in order to go to village Balewala. She has further deposed that the offending truck came from the direction of Rajpur road in a very high speed and struck Pooran. The front bumper of the truck hit Pooran as a result of which he fell unconscious. Pooran was taken to the hospital in the same truck. According to this witness many persons including Ashok came in the hospital and the truck number was noted down by Ashok at that time as the truck was standing in the Doon Hospital. This witness has further deposed that she went to Kotwali Police Station along with Ashok and got the report of accident scribed at her dictation by Ashok and lodged it at the Police Station. The witness has proved the first information report. Pooran succumbed to the injuries on the same day in the hospital. The other witness Faqir Chand, who was also present at the time of accident, died two or three years after the accident, therefore, the claimants/respondents could not produce any other witness of the accident. This witness Phool Mati is although sister of the deceased, but merely on account

of this relation, her testimony cannot be disbelieved. This witness is the author of the first information report, which was lodged by her with all promptitude and expedition. She has narrated broadly all the facts leading to the accident. This witness has no grudge against the driver of the truck. She was subjected to lengthy and incisive cross-examination, but nothing could be elicited from her which may destroy her testimony.

13- The appellants also produced the evidence before the court below. D.W.1, Baldev Prakash is the driver of the offending truck in question, who has deposed before the court below that at the crossing of Prince Hotel, there was a heavy rush. He has also deposed that he was driving the vehicle very slowly in first gear. According to his statement he took a turn at Prince Hotel and at that time at about 10 meters ahead of Prince Hotel the noise was heard and backside 'Dala' of the truck was knocked by some one. He thought that 'Dala' had been opened, hence he stopped the vehicle and came to the backside and found a person lying on the road at a distance of 2 to 3 feet from the truck. He has further deposed that he took the injured to the hospital on the request of the persons assembled over there. This witness has denied that any accident was caused with his vehicle. According to this witness his vehicle was standing in the hospital and the Police took him to Police Station. He was released on bail by the order of the court on the next day and the truck was also released. This witness in his cross-examination has nowhere stated that after his release on bail he made any complaint to the Officers of his department about his false involvement. He has also not made any complaint to the Police Officer about his false

implication. He has deposed that he had no previous acquaintance with the maker of the first information report and the persons who requested him to take the injured to the hospital, as well as the person died, nor he had any enmity with these persons. Maichand, D.W.2, is the cleaner of the truck in question. He has corroborated the testimony of D.W.1, but in his cross-examination he has admitted that the accident had taken place about 6.15 P.M. The appellants also produced D.W.3, Dheeraj Mani, a cleaner of another truck No. UTL-4426 belonging to the P.W.D. which was transporting cement from Gandhi Road, Dehradun to Uttarkashi and according to this witness truck No. UTL-6867 was going ahead of his truck and there was a taxi and a public truck in between two P.W.D. vehicles. This witness has deposed that he saw a man lying on the road, but could not see by whom he was struck. According to him the deceased fell down on being struck by the side of the vehicle. He has further deposed that the truck of Baldev Singh, i.e. UTL 2667 was stopped by the public, but he did not stop over there. The evidence of the these two witnesses, i.e. D.W.2 and D.W.3, indicate that these persons also did not report the matter to the higher authorities of their department, or to the police about the illegal arrest and about the false implication of their colleague. The silence on the part of these two witnesses is not meaningless. Therefore, there does not appear any reason for Phool Mati, P.W.1 to make a false report against the driver of truck No. UTL 6867 who had shown the courtesy to take the deceased to the hospital. At the same time, there is no reason for the police to falsely implicate the driver of the truck UTL 6867. The plea by the appellants before the court below that the driver of the truck in question was

falsely implicated in the case and the offending vehicle in question is not involved in the accident, appears to be artificial. The number of the truck and the name of the driver finds place in the first information which was lodged promptly and there is no likelihood of any sort of deliberation or concoction on the part of the maker of the first information report. I am therefore of the view that on the basis of the evidence on record, the accident took place on account of the rash and negligent driving of the driver of truck No. UTL- 6867 which belongs to P.W.D.

14- As far as the quantum of compensation is concerned, the record reveals that the deceased was aged about 32 years at the time of the accident and was working as a helper to a mason. According to the claimants/respondents he was earning Rs. 20/- per day. Smt. Padma Devi, P.W.1, is the widow of the deceased Pooran Singh. She has given the age of the deceased at the time of accident as 35 years and has deposed that her husband used to earn Rs. 20/- per day as helper with a mason. It is true that the claimants/respondents have not brought on record any documentary proof indicating that the deceased was doing the work of helper with a mason nor the mason with whom the deceased used to work, has been examined. At the same time this fact cannot be ignored that the deceased was a grown up man aged about 35 years and had a family to maintain, therefore, he must be doing some work for the maintenance of himself and his family members. The deceased, of course, had no regular employment, therefore, keeping in view the minimum wages, which a person could earn, at the time of the accident, comes to Rs. 600/- per month

and the Tribunal concerned has also assessed this amount which cannot be said to be excessive.

15- Keeping in view the age of the deceased as 35 years on the date of the accident, the Tribunal under the old Act applied the multiplier of 25 and has worked out the total amount of compensation $600 \times 12 \times 25 =$ Rs. 1,80,000/-. The Tribunal has also kept this factor in mind that in case if the deceased would have survived up to the age of 60 years, then he would have extended the financial help to his family members certainly for further 25 years.

16- Out of the total amount of compensation of Rs. 1,80,000/-, in case if $1/3^{\text{rd}}$ would have been spent by the deceased on himself, then the dependency of the claimants/respondents comes to Rs. 1,20,000/-.

17- The Tribunal has further deducted an amount upto an extent of 25% on account of various uncertainties of life and further deducted a lump sum amount also at the rate of 15% and after deduction of the amount @ 40%, the total amount awardable as compensation to the claimants/ respondents was assessed as Rs. 72,000/- along with an interest of 12% per annum from the date of filing the petition till the date of realization.

18- As the claimants have not filed any cross-appeal against the impugned judgment and award passed by the M.A.C.T. concerned, therefore, I am not supposed to enter into the merit of the amount of award made by the Motor Accident Claim Tribunal. The amount of award thus cannot be enhanced in absence of any cross-appeal filed by the claimants/respondents.

19- On the basis of the assessment of the evidence, I come to the conclusion that the impugned judgment and award passed by the court below awarding the amount of compensation in favour of the claimants/respondents is not liable to be disturbed.

20- The appeal lacks merit and is liable to be dismissed.

21- Accordingly the appeal is dismissed and the impugned judgment and order dated 20-1-1993, passed by the Tribunal concerned, in M.A.C.T. petition No. 86 of 1987, Smt. Padma Devi and others Vs. P.W.D. Uttarkashi and others, is hereby confirmed. No order as to costs.

(B.C. Kandpal, J.)

Dated: September 07 , 2006.

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